

# **Department of Environmental Protection**

## **Bureau of Air Quality**

### **Compliance and Enforcement Policy**

BUREAU OF AIR QUALITY COMPLIANCE POLICY  
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## **\*\*\*\*\*BUREAU OF AIR QUALITY COMPLIANCE POLICY\*\*\*\*\***

### **PURPOSE**

In serving the citizens of Maine, the Bureau of Air Quality ("Bureau") seeks to inspire a commitment to environmental protection and enhancement, promote innovation, provide exceptional customer service, and rely on strong science and state-of-the-art technology to achieve compliance solutions. This compliance policy provides a unified statement that integrates both traditional enforcement and non-enforcement tools, recognizing that a broad range of tools are available to achieve, and go beyond, compliance. This policy is intended as a guideline for use by the Bureau in its efforts to promote compliance, prevent violations, and pursue the timely, consistent and equitable resolution of violations of the laws, regulations and permits the Bureau administers. It also provides specific descriptions of how the Bureau intends to implement the Department of Environmental Protection's ("Department") overall Compliance Policy (dated \*working draft\*).

### **OBJECTIVES**

The Bureau's compliance objectives are to:

- encourage voluntary compliance with environmental statutes, regulations, licenses and permits;
- provide incentives for regulated entities to go beyond compliance with source reduction and pollution prevention in order to achieve environmental excellence;
- establish an appropriate and consistent approach to violations and violators;
- ensure that appropriate corrective and future preventative actions are taken once a violation has occurred;
- remove any incentives or opportunities gained by violating an environmental requirement;
- deter or prevent future violations

### **COMPLIANCE TOOLS**

The Bureau uses a variety of options, or "tools", to encourage regulated entities to achieve compliance. These tools are used to avoid as well as resolve compliance problems. In each particular circumstance, the Bureau evaluates the facts and exercises its discretion to determine which tool to combination of tools are appropriate to achieve compliance with environmental requirements. The result is a consistent and predictable compliance approach that retains enough flexibility to deal with the unique facts of each case. The order of the following compliance tool

list is not intended to imply any preference among, or necessary progression regarding, use of the tools.

- **Education and Outreach**

The Bureau offers education and outreach opportunities as a proactive means of helping the public understand, support, and comply with environmental laws, and to teach responsible environmental stewardship. Education and outreach is the responsibility of all Bureau staff on a daily basis and is the cornerstone for minimizing adverse environmental impacts and preventing environmental violations. It ranges from holding seminars that provide wide segments of the population with general information, to targeting particular facilities, locations, ecosystems, or business sectors. Education and outreach is an effective tool for educating the public about new regulatory requirements or stemming the tide of small, commonly observed violations. When a violation is discovered, education on how to comply and prevent recurrence is often an integral part of resolving that violation.

- **Technical Assistance**

Technical assistance is targeted education and outreach where the expertise of the Bureau and the Department is used to help solve a particular environmental problem at a particular location. Technical assistance can take the form of process consultation and advice in manufacturing or commercial operations aimed at reducing adverse environmental impacts through pollution prevention. It may be done informally as part of an inspection or telephone call, or more formally by designated Bureau technical assistance staff and/or through one of the Department's technical assistance programs. Regulatory assistance (i.e. helping entities to understand regulatory requirements) is also a primary focus of the Bureau and available as part of our daily activities. In the event of a violation, technical and regulatory assistance may be provided when remediating and correcting the violations at issue.

- **Voluntary Compliance**

The Bureau expects environmental requirements to be complied with voluntarily. Entities must be proactive in their compliance efforts by evaluating plans and operations to determine whether environmental requirements apply. The Department has established programs and policies -- Environmental Leadership Program (ELP), Small Business Compliance Incentives Policy, Compliance Leadership through Environmental Audits and Negotiations-Pollution Prevention Program (CLEAN-P2) -- to further encourage voluntary compliance and beyond compliance activities by providing incentives to entities that approach the Bureau seeking regulatory and technical assistance. The Bureau views an entity's voluntary compliance actions and overall environmental performance record when evaluating good-faith efforts to comply with environmental requirements. In this regard, the Bureau has found that a failure to consistently evaluate plans and operations to determine whether environmental requirements apply increases the likelihood of non-compliance.

- **Licensing**

The Bureau issues customized licenses that balance environmental protection with the unique operations that exist at a regulated entity's site and facility. License provisions are clearly and

concisely written to promote compliance and expedite any future compliance efforts. The licensee is responsible for understanding all provisions contained in their license. In this regard, the Bureau expects licensees to determine the feasibility of conforming with all provisions contained in their license prior to accepting that license from the Bureau. In addition, the licensee is responsible for ongoing compliance evaluations and immediately informing the Bureau of any compliance problems. The Bureau views immediate disclosure of compliance problems and immediate work to permanently resolve an issue as good-faith efforts that will be considered in determining an appropriate response. Failure to consistently evaluate compliance with license provisions and immediately disclose and correct license compliance problems increases the likelihood and severity of an enforcement response.

- **Compliance Inspections**

The Bureau's staff conducts a variety of activities to monitor and encourage compliance with laws and regulations administered by the Bureau including facility inspections, enforcement follow-up inspections, complaint response, malfunction and excess emission report review, emission test observation and analysis, and compliance data tracking. The goal of the compliance monitoring program is to augment the overall goal of the Bureau which is to protect and improve the state's air quality. The program strives to achieve this goal by providing motivation to the regulated facilities in the State of Maine to comply with or go beyond the requirements of the air pollution control laws which apply to them. Each inspection includes a pre-inspection conference, an exit interview and very often a compliance assistance component. Deficiencies which are identified during the inspections are discussed during the exit interview. After the inspection, violations are discussed with enforcement staff to determine the appropriate response.

Facilities which are required to monitor emissions with Continuous Emission Monitors or Continuous Opacity Monitors are required to submit quarterly reports to the Bureau which, among other things, include information on excess emissions, malfunctions and monitor downtime. Facilities have an opportunity to request that violations caused by excess emissions be exempt from monetary penalties if the excess emission is caused by a cold start-up, planned shutdown or a malfunction which was beyond the control of the facility. Compliance inspection staff review the reports for completeness and substance, and grant or deny the requests for exemptions.

Letter of Warning.

The Bureau usually corresponds with entities upon discovering noncompliance with environmental requirements. A Letter of Warning ("LOW") is sent to provide regulated parties with information regarding an alleged violation. A LOW identifies the violation(s) and may contain a schedule for coming into compliance. Where a LOW has been sent, the Bureau views prompt correction and avoidance of repeat violations as essential. A history of LOWs or a LOW not followed with prompt corrective action increases the likelihood that additional enforcement actions will be pursued.

- **Enforcement**

Regular inspections and enforcement of environmental requirements are key elements in gaining compliance. While a variety of tools exist for preventing and resolving compliance problems, the Bureau may pursue formal, written, and legally binding resolutions to environmental violations where corrective action and/or penalties are appropriate. The Bureau will select an appropriate course of action for enforcing Maine's environmental requirements based upon the facts of a case and the *Considerations for Determining Appropriate Responses* contained in this policy. As a result, the Bureau may use any one tool, or combination of tools, as each is appropriate to achieve compliance with environmental requirements. The Bureau's preference in resolving civil enforcement actions is to reach agreements as quickly as possible that: remediate environmental damage; restore natural resources to appropriate conditions; impose penalties that capture any economic benefit gained by a violator, and deter similar actions in the future. The process followed by the enforcement staff is described in detail in the Bureau's Enforcement Workplan (Appendix A). The Bureau determines penalties by applying the current BAQ Penalty Assessment Guideline (Appendix B).

#### A. Notice of Violation

A Notice of Violation ("NOV") is appropriate where a significant violation exists and the probability of future civil enforcement action is substantial. The Bureau must issue a NOV prior to initiating a civil enforcement action. A NOV will at least describe the alleged violation, cite to statutory, regulatory, permit, and license provisions alleged to have been violated, and provide a deadline for performing corrective action and response to the notice. Performing the corrective action identified in the NOV does not preclude additional civil enforcement actions or additional remedial work. The Bureau views prompt corrective action where a NOV has been sent and avoidance of repeat violations as essential.

#### B. Administrative Consent Agreements

The Bureau pursues voluntary agreements for corrective action and/or penalties to resolve environmental violations quickly and effectively. The Bureau provides Administrative Consent Agreements to alleged violators in order to achieve administrative settlement rather than pursue an action in court. The Department of the Attorney General ("AG"), Board of Environmental Protection, and the Bureau enter into Administrative Consent Agreements to achieve final resolution of pending civil enforcement actions. An Administrative Consent Agreement represents a legally binding contract between a violator and the State of Maine that prescribes appropriate penalties and corrective actions. An Administrative Consent Agreement offers resolution without the time and expense of a court action.

**➤ Supplemental Environmental Projects.** The Bureau and AG may consent to a violator performing an environmentally beneficial project, or so-called Supplemental Environmental Project ("SEP"), as part of resolving an administrative enforcement action with a consent agreement. While SEPs are not a tool for bringing a violator into compliance, projects may be performed to mitigate certain penalties. The Department implemented a final policy regarding the acceptability and operation of SEPs on August 1, 1996, which must be consulted for details on the use of this tool.

#### C. 80K Actions

Certified Bureau staff may pursue violations of environmental requirements in District Court under Maine Rule of Civil Procedure 80K. These court actions are typically filed on behalf of the Bureau where administrative settlement efforts have failed. The goals of pursuing civil enforcement actions under Rule 80K are to efficiently and effectively resolve violations without the relatively significant expense and inefficiency of pursuing actions in Superior Court.

**7 Mediation.** As part of our efforts to consensually resolve civil enforcement actions in the most efficient and effective manner, the Bureau will pursue mediation and consensual decrees in 80K cases pursuant to 38 M.R.S.A. §347-A(4)(E) in each appropriate circumstance.

#### D. Case Referral to the Department of the Attorney General

The AG is constitutionally responsible for acting as the Bureau's legal counsel and is the chief law enforcement agency for the State. The Bureau refers civil enforcement actions to the AG when administrative settlement can't be reached and serious violations exist, immediate injunctive relief is sought, and/or significant legal issues are in dispute. Criminal enforcement actions are automatically referred to the AG's Office for pursuit in an appropriate judicial forum.

#### E. Enforcement by Federal, State, and Local Entities

Independent authority to enforce certain environmental laws exists in federal, state, and local authorities, including the AG. The Bureau works closely with these entities and, where appropriate, pursues joint enforcement actions. Every effort is made to coordinate enforcement actions among federal, state, and local entities.

## **CONSIDERATIONS FOR DETERMINING APPROPRIATE RESPONSE**

While the compliance tool, or combination of tools, that may be applied in response to a violation varies according to a number of factors, the Bureau's goals are always to gain compliance, protect the environment, and treat each violator in an evenhanded manner. The questions and analysis in this section provide guidance for determining the appropriate response to a violation. These considerations are cumulative and will not be applied in isolation.

- **What is the environmental impact/significance of the violation?**

When the area impacted by a violation is large or particularly sensitive, the likelihood of an enforcement response is high and the severity of that response increases. Likewise, where actual environmental damage exists or the violation has continued for an extended period of time, the likelihood of an enforcement response is high and the severity of that response increases. Technical paperwork violations, so-called "paper violations" (e.g., failure to submit and maintain required records, monitor downtime, or renew a license) are significant to the extent they affect the Bureau's ability to determine whether a company has been in compliance, the level of non-compliance, or the extent and length of an adverse environmental impact resulting from non-compliance. Failure to comply with other

requirements, such as training, will be evaluated on the potential effect the failure can have on a facility's ability to maintain compliance. Other factors related to environmental impacts and violation significance that will determine the nature of an enforcement response include: whether the activity which caused the violation was inherently dangerous or the pollutants involved are hazardous; how far beyond standards or license limits the activity was; the number of violations involved; and whether there were any potential public health risks or environmental risks posed by the violation.

- **Under what circumstances were the violations discovered?**

Where the Bureau discovers noncompliance during an announced or unannounced compliance inspection or as a result of investigating complaints from the public, the likelihood of an enforcement response is significantly greater than where a party voluntarily requests compliance or technical assistance, or where the results of an internal or third party compliance assessment are voluntarily reported. Indeed, the Department has established programs under the Small Business Compliance Incentives Policy which protect entities that voluntarily approach us seeking regulatory and technical assistance from civil penalties, so long as any violations discovered for the first time are corrected within a prescribed time period. A demonstrated commitment to voluntary compliance and a strong overall environmental compliance record diminish the likelihood or severity of an enforcement response. The Bureau views immediate disclosure of compliance problems and immediate work to permanently resolve issues as good-faith efforts that will be considered in determining an appropriate compliance response. The failure to consistently evaluate compliance with regulatory provisions and immediately disclose and correct compliance problems increases the likelihood and severity of an enforcement response.

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# **BUREAU OF AIR QUALITY ENFORCEMENT WORK PLAN**

## **I. Introduction**

A program that ensures compliance with state and federal statutes and regulations is necessary to protect human health and the environment. It is our belief that maximum compliance with environmental regulations is achieved through vigorous compliance monitoring, enforcement, and technical assistance (including compliance incentives) programs. This conclusion is based upon our own experience, the shared experiences of other state programs, and other published information.

The enforcement program seeks to accomplish its mission through the removal of the economic benefit gained through non compliance, through the deterrent effect previous enforcement actions have on future potential violators, and by the "leveling of the playing field" creating a regulatory environment where it makes good business sense to comply with environmental regulations. In addition to traditional enforcement responses, the enforcement program may employ the use of Supplemental Environmental Projects (SEPs) to resolve an enforcement issue, or defer an enforcement response to various compliance assistance initiatives as the nature and circumstances of the violation and Departmental policy dictate.

Each issue brought to the attention of the enforcement staff is reviewed, and where necessary, researched individually. This research may involve the alleged violator, other DEP staff of varying regulatory disciplines or areas of expertise, the Attorney General's Office, EPA staff (Headquarters, Regional and Research Triangle Park), expertise found in other state regulatory agencies, electronic media, and private consultants. On the basis of the information gathered from these sources, a recommendation is made to pursue the matter as an enforcement case, resolve the matter in a compliance assistance program, or if circumstances dictate, bring the matter to closure without the need for formal action.

Matters that are approved for enforcement are most generally resolved via the Consent Agreement process; issues that do not lend themselves to administrative resolution (either because of the nature of the violations, or because negotiations reach an impasse) are referred to the Office of the Attorney General. Following a referral to the Office of the Attorney General, the role of the DEP enforcement staff is limited to support functions as the AG's Office assumes the responsibility for the conduct of the enforcement case.

## **II Air Bureau Enforcement Process**

Violations are brought to the attention of the enforcement section through the compliance staff, the licensing staff, or (potentially) citizen complaint. Violations documented by compliance staff are discussed at Non Compliance Review Committee (NCRC) meetings that occur every two months and are attended by enforcement, compliance, and licensing staff (this process does not preclude an inspector from bringing a matter forward at an earlier date if circumstances warrant).

On the basis of the NCRC discussion a recommendation is made and, (generally) on the basis of the recommendation, an action is taken. Violations documented through licensing are most often documented during the application review (though no license processing is delayed due to a pending enforcement action). To date few actions have been initiated solely on the basis of a citizen complaint, but in the event that the complaint investigation documents a violation, the violation is handled in the same manner as violations documented through a compliance inspection.

Against this backdrop of violation documentation and staff recommendations at the State level, are EPA's oversight activities. As a condition of the delegation of the air program EPA possesses its own authority to intercede on any State enforcement action involving a Federally-enforceable regulation or license condition to ensure that enforcement resolutions are at least minimally acceptable to EPA. Typically, it has been mutually acceptable (even desirable) for the State to initiate and conduct its own enforcement actions. It has also proven useful for the State to enter into joint enforcement actions with EPA. EPA, however, can initiate its own enforcement actions and not afford the State the opportunity to participate. Generally speaking, our enforcement program has been sufficiently active to avoid all but a few instances of unsolicited EPA involvement. EPA oversight is also exercised in the monthly phone calls and quarterly meeting during which our activities during the most recent reporting interval are discussed and reviewed.

Immediately following the recommendation to proceed with an enforcement action this information is relayed to the Division Director (Field Services), and, where the probability of controversy exists, the Bureau Director and Commissioner's Office are also advised immediately of the pending action. Enforcement staff then drafts a Notice of Violation (NOV) which is subsequently forwarded to the responsible party via certified mail.

As required by law, the NOV specifically identifies the violation(s) to be enforced against. Each NOV is accompanied by a cover letter which again identifies the violation(s) in question, schedules a date and time for a meeting to discuss the circumstances surrounding the violation(s), and encourages the recipient to contact the Department if he or she has any questions concerning any aspect of this process.

The purpose of the NOV meeting is twofold: first to (re)establish that an enforceable violation has, in fact, occurred (on occasion an alleged violator has been able to provide information that disposes of the entire matter) and to determine whether an alleged violator will dispute either that a violation has occurred, and/or that the responsible party has been accurately identified. The second objective of the meeting is to familiarize the violator with the Consent Agreement process, both in terms of the procedural aspects of the process and also specifically in terms of the violator's choices and options throughout the process.

Following the NOV meeting, a consent agreement document is drafted which includes provisions for both corrective actions (as and where appropriate) and penalties. The nature of the corrective actions is almost entirely dependent upon the nature of the violation in question, ranging from a very general requirement to comply with the law to more elaborate compliance schedules with

milestones and reporting requirements. Penalties are calculated according to the BAQ Penalty Guidance. In much the same manner as the Federal Stationary Source Civil Penalty guidance, our penalty guidance assigns a value to the three elements of the penalty which are then added together and ultimately comprise the initial penalty proposal. These elements are: the economic benefit, the environmental harm, and the (violation's) relative importance to the regulatory scheme. Values are calculated (in the case of economic benefit) or assigned (pursuant to the guidance) for each element; in those instances where no economic benefit (or where no demonstrable environmental harm) can be demonstrated, the elements may be assigned a zero value.

The draft consent agreement is reviewed by the Field Services Division Director, the Bureau Director, and the Commissioner's Office prior to its review by the Attorney General's Office. The draft document and comments then return to enforcement staff for revision. No consent agreement proposal ever reaches a violator without having first undergone this extensive review. Upon the completion of this review process the consent agreement proposal is sent to the violator along with both a cover letter providing additional information about the consent agreement and a DEP Information Sheet which responds to commonly asked questions about the consent agreement process. Upon receiving the consent agreement proposal the violator is provided a period of time (invariably two weeks or more) within which to consider the terms of the agreement, and may then propose alternative language with respect to the facts as presented in the agreement, the penalty amount, and/or the corrective actions. Negotiations will continue for as long as it is apparent that progress is being made toward a resolution of the violation. Throughout this process the violator is encouraged to bring forward any relevant information that may have a bearing on the case; violators are also encouraged to review previously executed consent agreements to assure themselves that they are being treated fairly, and in a manner consistent with persons responsible for similar violations.

It is not uncommon, during the course of the negotiations, for a violator to request to speak with the Commissioner regarding the enforcement action; as provided by law (38 M.R.S.A. §342(1-A)). In the event that the negotiations reach an impasse, the violator is advised of the potential for a referral to the Attorney General's Office and provided a time frame within which to decide which course of action is best for them. In most cases, violators opt for an administrative resolution of the violation. For those unwilling to settle administratively, the referral to the A.G.'s Office sets in motion a more formal process to resolve the matter.

The enforcement staff provides the Commissioner, Bureau Director and Field Services Division Director with a monthly Enforcement Status Update which tracks the progress of enforcement cases. All Notices of Violation, Consent Agreements, Consent Decrees and Referrals to the Office of the Attorney General are entered into the Federal AIRS Facilities System (AFS).

### **III Enforcement Priorities**

The nature of enforcement activities is such that a hard and fast assignment of staff time to specific activities is difficult to achieve; clearly the resolution of ongoing enforcement issues will remain among the top priorities. New enforcement cases will be developed (as resources permit)

according to environmental/health impact, regulatory impact, and departmental initiative. Departmental initiatives are developed to target areas that are of critical importance to Maine's environmental objectives. The enforcement priorities for each year are outlined in the Assistance, Compliance and Enforcement Strategy section of Maine's Performance Partnership Agreement with the Federal Government.

The following tasks and functions remain priorities for the enforcement program, subject to the constraints of resources and the demands of direct enforcement activities:

Briefing memoranda outlining enforcement/compliance issues will continue to be provided upon request for both informational purposes ( such as in advance of the Governor's appearance at some location) and for regulatory purposes (such as an appeal of a license or associated with an enforcement action).

Enforcement staff will continue to review air emission licenses, both in terms of the enforceability of the licenses, and in terms of the Bureau's adherence to the regulatory requirements of the licensing process.

Enforcement staff will continue to review, comment on emission measurement/monitoring issues associated with stack testing, continuous emission monitoring (CEM), and parametric monitoring.

Enforcement will continue to work closely with the Compliance Assistance Program by the the sharing of information and by finding ways to lend support to the Program

Where afforded the opportunity to do so, enforcement staff will continue to provide, in consultation with the Attorney General's Office, comments on both existing and proposed statutes and regulations.

Enforcement staff will continue to review and attempt to assess the impact Federal initiatives.

Enforcement staff will continue to explore alternatives to traditional enforcement responses.

## **COMPLIANCE / ENFORCEMENT TRACKING**

Compliance inspectors have the primary responsibility for tracking initial non-compliance. Each staff has his/her own tracking system. Because of the small number of facilities in Maine, the staff may maintain a paper log of his/her inspection and compliance results. Some staff keep a log on a personal computer. Staff track actions for dry cleaners, gasoline service stations and stationary emission sources. Citizen complaints are recieved and logged by all Air Bureau field staff. The senior compliance inspector in each regional office is responsible for the tracking system in his/her office. Periodically, the staff's action logs or their summaries are retrieved by the Compliance Coordinator or the Enforcement Supervisor for review.

Stationary Source field and enforcement actions are tracked on the EPA AFS system where the information can be shared with EPA and reviewed and retrieved by Air Bureau management. Information is entered on-line into AFS by the compliance inspectors and the enforcement staff. Field actions for a month are entered into the system by the fifteenth day of the following month. Information on the AFS system is downloaded once a month and reviewed by the inspection staff for accuracy and quality control. The monthly data is shared with Air Bureau central office staff on the LAN through EPA's Inspection Targeting System and by hard copy with staff responsible for enforcement.

Stationary facilities which have continuos emission monitoring systems have their reports and performance tracked by the field staff using EPA's PC-CEMS tracking system. Data is entered into PC-CEMS by field staff on a quarterly basis on their own PC. After the entry for the facilities in their region has been completed, the information is sent to the central office where it resides an the LAN. The Compliance Coordinator produces quarterly summary reports on the CEMS for management and enforcement review.

Supervisors and management review the periodic reports on a regular basis:

- to ensure that work conducted by the field staff is appropriate;
- that violations are resolved in a timely manner;
- that reasouces are used efficiently;
- to identify trends and system-wide problems; and
- to plan for future resource needs and compliance strategies

The Bureau's procedures and protocol for using the Inspection Targeting System, PC-CEMS and AFS are found in the User Manual For BAQC Compliance Inspections Computer Systems, last update August 1997.

## **Case Management**

1. Field staff provide a written report to a facility within two weeks of conducting a field inspection. If the staff notes a violation during the inspection, he or she sends a Letter of Warning with the report. The LOW officially notifies the responsible party of the violation and requests a remedy or remedial plan.
2. Violations and the action taken by the responsible party are discussed at the bi-monthly Non-Compliance Review Committee meetings. At the meeting, a decision is made on whether or not additional enforcement action is needed to address the violation.
3. After the NCRC meeting, the Enforcement Supervisor develops a recommendation to make to management on how to deal with violations.
4. If a decision is made by management to proceed with enforcement, the Enforcement Supervisor, working with the Attorney General's Office, will draft and mail a Notice of Violation to the responsible party. The letter will reiterate the violations and request that the party attend a pre-set meeting to discuss the violations and the remedial actions that the party.

## **Criteria for Determining Proper Enforcement Action**

### **Discovery of Violation and Letter of Warning**

All violations found during inspections or investigations will result in a Letter of Warning (LOW) within two weeks after completing the inspection or investigation. The LOW will request that the violation be corrected by a time certain or request the violator to submit a corrective action plan by a time certain. The amount of time allowed for submittal of the corrective action plan will vary according to the complexity of the correction but should not exceed two months.

### **Determining Whether to Bring Violations to the Non-Compliance Review Committee**

After a field inspector sends a LOW in response to discovering a violation during an inspection or investigation, the inspector will decide whether to bring the violation to the Non-Compliance Review Committee. In making that decision, the inspector will consider the following factors:

1. What was the root cause of the event?
2. Does the violator have an air emission license or other environmental license?
3. What is the degree of outreach that has occurred about the action that caused the violation and was the violator contacted directly about the actions?
4. How likely is it that the violator should have known that his or her action was or could cause a violation?

5. Is this a recurring violation or part of a trend or does it have a potential to recur?
6. Could this violation have been reasonably foreseen and prevented?
7. Was the violation entirely or in part due to poor maintenance, careless operation, or poor design on the part of the responsible party, its contractor or employees?
8. How adequate are the violator's plans and procedures to prevent the recurrence of this incident?
9. What actions did the responsible party take to mitigate the event?
10. During the event, were the owners or operators, maintaining and operating the facility (including associated air pollution control equipment) in a manner consistent with good air pollution control for minimizing emissions?
11. Are there any State or federal statutes, regulations or federal guidance that specifically prohibit the action of the violator?
12. What was the magnitude of the violation?
13. What was the impact of the violation upon air quality?
14. How did the inspector find out about the violation?
15. Are there any State or federal statutes, regulations or federal guidance that specifically prohibit the action of the responsible party?
16. How has the Bureau dealt with similar situations?
17. How does this violation relate to the priorities of the Bureau or Department?
18. Will this decision set a precedent and, if so, how will it affect future actions of the Bureau?

The inspector can discuss the violation with other inspectors, the Compliance Coordinator, the Enforcement Staff and Bureau management in making his or her decision. If the inspector decides that additional enforcement action is needed, he or she should present the violation to the Non-Compliance Review Committee within three months after the violation was discovered. The Enforcement Staff can choose to recommend enforcement beyond an LOW at any time without the input of the NCRC if he believes that the facts surrounding a violation indicate that additional action is warranted.

The Compliance Coordinator shall review all inspection reports for proper compliance determination and consistency between regions and can independently request that a violation be reviewed by the NCRC or the Enforcement Staff.

#### **Determining Whether to Proceed with Formal Enforcement (NOV and/or C.A.)**

After the nature of the violation has been discussed at an NCRC Meeting or between the inspector and the Enforcement Staff, the Enforcement Staff investigates the violation further in order to make a determination on whether formal enforcement should take place.

The Enforcement Staff reviews the factors the inspector considered in bringing the violation to the Enforcement Staff (see factors listed above) and gathers further documentation of the violation. The Enforcement Staff then considers the following factors when recommending whether formal enforcement should proceed and the priority of case:

1. Does the facility fall under the small business policy or is the facility working with the P2 group?
2. Is the violation properly documented to support formal enforcement?
3. Has the facility come back into compliance and was there prolonged non-compliance?
4. What is the significance of the violation within the regulatory scheme or in terms of environmental impact?
5. Did the facility benefit economically from non-compliance?
6. Is the violator a major or non-major source?
7. Have there been similar violations at the facility and/or is this violation part of a trend of violations occurring at the facility.
8. What is the level of sophistication within the industry in dealing with compliance issues and/or the accessibility of appropriate control technology?
9. How does the violation relate to the priorities of the Bureau or the Department?
10. How has the Enforcement Staff dealt with similar violations?
11. Has there been adequate outreach to the business sector to which the facility belongs?
12. Are there any other extenuating factors that have a major effect on the case?

The Enforcement Supervisor then makes a recommendation of whether or not to proceed with formal enforcement to the Division Director and discusses the relevant facts of the case. The Division Director then makes a decision about the case. If it is a major case or some controversy is involved, the Enforcement Supervisor and the Division Director discuss the case with the Bureau Director.



### **Proceeding with Formal Enforcement (NOV and Consent Agreement)**

When the decision has been made to proceed with formal enforcement the Enforcement Staff sends out a Notice of Violation (NOV) to the violator. Every effort is made to send the NOV out within three months of full documentation of the violation. The cover letter to the NOV sets up a time for the Enforcement Staff and the violator to meet and discuss the enforcement process and allows the violator to shed light on the violation that might indicate that a Consent Agreement is not appropriate. Most NOVs sent out by the Air Bureau are followed up with a Consent Agreement. However, when further information reveals that a Consent Agreement is not appropriate for a given case, the Enforcement Supervisor discusses the situation with the Division Director. The Enforcement Staff's goal is to settle Consent Agreements within six months of when the NOV was sent out. However, it should be noted that each case varies greatly and therefore the time it takes to settle a case varies greatly. In addition, it should be realized that these are negotiated settlements and the time it takes to reach an agreement is partially determined by the violator.